

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7717 OF 2005

Kusum Vasudeo Mhatre Petitioner

versus

Madhukar Sitaram Rodkar ... Respondent.

Ms. Aarti P. Bhide for the petitioner

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 13, 2006.

P.C:

1. Heard the learned advocate for the petitioner.

2. This petition is preferred by the petitioner landlord against the order of the lower appellate court dismissing her appeal and confirmed the judgment and order passed by the trial court, dismissing the suit which came to be filed against the respondent/defendant tenant under the provisions of the Bombay Rent Act on various grounds.

3. The plaintiff landlord filed suit on the grounds of arrears of rent and thereafter amended the plaint and added other grounds of nuisance as well as illegal

construction of the permanent structure in the premises

and sought possession of the suit premises.

4. The suit was contested by the defendant denying all the allegations made by the plaintiff landlord. The trial court came to the conclusion that the plaintiff failed to prove any of her allegations including that of alleged nuisance against the defendant and dismissed the suit. The appellate court after hearing both the sides countered with the finding recorded by the trial court and dismissed the appeal.

5. At the outset it may be noted that the learned counsel appearing on behalf of the petitioner has pressed the allegations with regard to the alleged nuisance caused by the defendant tenant. It was submitted that several police complaints came to be lodged against the defendant which was sufficient to show that there was nuisance committed by the tenant against the landlord who is an old person. However, on the basis of the evidence both the courts below came to the conclusion that the record was sufficient to show that the landlord had not only filed police complaints against the respondent, but also against other tenants and therefore it may not be said that the plaintiff is successful in making out the cause of nuisance so as to obtain decree of eviction against the tenant. It may

also mention that one complaint which was filed by the landlord against the tenant was withdrawn by the plaintiff herself and other one was compounded and in the third matter the respondent was acquitted. In these circumstances the fact was also taken into account that no other evidence was forthcoming to support the allegations made by the landlord and both the courts below thought it fit to dismiss the suit without any supportive evidence on behalf of the petitioner.

6. In the circumstances, I do not see any reason to interfere in the matter as the reasoning adopted and the finding recorded by the courts below appears to be just legal and proper.

7. In the result the petition stands dismissed in limine.

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